IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 24890 of 2004(K)

PETITIONER:

A.AHAMED KABEER,
THASLEEM TRADERS, KOLLENGODE ROAD,
PUDUNAGARAM, CHITTUR.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.MANOJ KUMAR.M

RESPONDENTS:

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1. THE INTELLIGNECE OFFICER,
SQUAD NO.II, COMMERCIAL TAXES,
PALAKKAD.

2. DEPUTY COMMISSIONER, COMMERCIAL TAXES,
PALAKKAD.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
PUBLIC OFFICE BUILDINGS, THIRUVANANTHAPURAM.

4. THE TAHSILDAR (REVENUE RECOVERY),
CHITTUR, PALAKKAD DISTRICT.

BY ADV. SHRI.K.PPRADEEP, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 24890/2004

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE PENALTY ORDER PASSED BY THE 1ST RESPONDENT NO. IPD (III) 24/2001-02 DATED 26/06/2002.

P2 : COPY OF THE ORDER PASSED by the 2ND RESPONDENT NO.STRP 55/2002 DATED 01/02/2003.

P3 : COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 08/03/2003.

P4 : COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT NO.R3.16007/03 (STRP NO.71/03) DATED 11/06/2004.

P5 : COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE RR ACT ISSUED BY THE 4TH RESPONDENT DATED 25/09/2002.

P6 : COPY OF THE RECEIPT OF PAYMENT NO.73 DATED 26/10/2002.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 24890 of 2004

Dated, this the 1st day of December, 2007

J U D G M E N T

Heard learned counsel for petitioner and learned Government Pleader.

2. Petitioner is challenging Ext.P4 order whereunder the Commissioner has confirmed penalty levied under Section 45A of the KGST Act and confirmed in first revision. On going through the impugned orders, I find that all the authorities have concurrently found that petitioner was engaged in suppression and unaccounted sales. It is seen that during inspection though massive closing stock was shown in the books, there was no physical stock on inspection. Obviously, petitioner was engaged only in clandestine transactions and therefore, levy of penalty for evasion of tax is perfectly in order. However, it is seen that petitioner has included sale of closing stock in the monthly return filed for December, though without payment of tax. Moreover, addition is seen made in the assessment for the very same period. In the circumstances, I feel levy of maximum penalty is little harsh. Accordingly, this writ petition is allowed in part modifying penalty levied, which is confirmed vide Ext.P4, to 1½ times of actual tax, as against two

times the amount of actual tax levied as penalty. Moreover, since substantial amount of tax is also payable, I reduce the interest payable for the balance penalty amount to 60% and waive the balance 40% of interest as penalty, provided, petitioner clears the balance penalty sustained with 60% interest thereon on or before 30/03/2008.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg